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Report submitted by the independent expert on the situation of human rights in the Democratic Republic of the Congo

Note by the Secretariat**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the situation of human rights in the Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré, submitted pursuant to General Assembly resolution 59/207 and Commission on Human Rights resolution 2005/85.

Summary

The mandate of the independent expert, appointed on 26 July 2004 by the Chairperson of the Commission on Human Rights, was renewed on 21 April 2005 by Commission resolution 2005/85. In 2004, the independent expert carried out two missions to the Democratic Republic of the Congo, the first from 22 August to 2 September, prior to the presentation of his oral report to the fifty-ninth session of the General Assembly, and the second from 9 to 18 November, on which he visited the eastern part of the country, specifically South and North Kivu (Bukavu and Goma). In 2005, the independent expert returned to the Democratic Republic of the Congo from 16 to 27 August and visited, in addition to Kinshasa, the key district of Ituri. In the light of his meetings in situ, the information he has received and the analyses he has made, the independent expert makes the following assessment.

The human rights situation remains worrying throughout the territory of the Democratic Republic of the Congo, particularly in the eastern part of the country (Ituri, North Kivu and South Kivu) and in northern Katanga, where militias and other

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** This report is being transmitted late because of the independent expert's recent mission to the Democratic Republic of the Congo, which took place only in mid-August 2005 and following which this report was drafted.

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armed groups, national and foreign, as well as the armed forces of the Democratic Republic of the Congo and the Mai-Mai are committing atrocities and other massive human rights violations with impunity. Massacres of civilians, mass rapes of women and girls and summary executions, among other things, have posed a serious challenge to the Transitional Government's efforts to improve the situation.

The suppression of peaceful demonstrations in Kinshasa, Kasai Oriental and Kasai Occidental by the forces of law and order, the precarious situation of unpaid or underpaid State employees and civil servants, the climate of impunity and the threats and harassment suffered by journalists and human rights defenders are causing unrest and jeopardizing the return to peace.

The main worries include the absence of consensus in the joint management of the transition period and the steady deterioration of law and order in Ituri (Province Orientale) following repeated attacks by armed militias. The absence of an independent judiciary and the executive branch's control over the judiciary and judicial decisions are also regrettable. Added to this is the problem of lack of security, the situation of women and children, the trafficking and illegal exploitation of natural resources and other violations of fundamental rights.

In such a context, the independent expert recommends:

- That the process of disarming the Forces démocratiques de libération du Rwanda, the Interahamwe, the "Rastas" and their Mai-Mai allies and their unconditional departure from Congolese territory should be accelerated;
- That with a view to ensuring social peace, the Ministry of the Interior should take all necessary measures to permit the active participation of all shades of political opinion in democratic processes;
- That the forces of law and order should be ordered to stop suppressing rallies and other demonstrations, as they have done recently;
- That those allegedly responsible for the criminal acts committed in the eastern part of the country should be questioned and brought to justice;
- That public freedoms should be respected throughout the electoral process, that mechanisms should be set up to combat the culture of impunity and that the Joint Commission on Good Governance should function effectively so as to combat and eradicate corruption and embezzlement of the salaries of State employees and the wages of soldiers and police;
- That the Government should strive to promote the independence of judges and magistrates and to ensure the independence of the judicial system, providing it with a budget that will guarantee its financial independence;
- That the Ministry of Social Affairs, the Ministry of Human Rights and the Ministry of the Interior, in cooperation with the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR), should speed up the return of internally displaced persons and refugees before the end of 2005.

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I. Introduction

1. By its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights in the Democratic Republic of the Congo and to verify that its obligations in that field were being fulfilled.

2. On 21 April 2005, the independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/120).

3. In its resolution 2005/282, the Economic and Social Council approved the Commission's decision, in its resolution 2005/85, to: (a) extend the mandate of the independent expert for one year and request the Secretary-General to provide all necessary assistance to enable the independent expert to fulfil his mandate; (b) request the independent expert to submit a progress report to the General Assembly at its sixtieth session and to report to the Commission at its sixty-second session; and (c) renew its request to the Secretary-General that he should provide advisory services to the Democratic Republic of the Congo in the field of human rights.

4. In its resolution 59/207, the General Assembly decided to continue to examine the situation of human rights in the Democratic Republic of the Congo and requested the independent expert to report to it at its sixtieth session. This report is being submitted in response to that request.

5. The report is based on information transmitted regularly to the independent expert by OHCHR, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and representatives of institutions, churches, non-governmental organizations, political parties and associations, as well as information gathered during his recent mission to the country from 16 to 27 August 2005. The report reflects information received up to 7 September 2005.

6. The independent expert visited the Democratic Republic of the Congo for the third time from 16 to 27 August 2005, visiting Kinshasa and Bunia (Ituri). He had scheduled his mission to take place earlier, but had to delay it because of the events of 30 June and the security situation.

7. In Kinshasa, the independent expert talked to the country's authorities, particularly representatives of the Government and its institutions, the Special Representative of the Secretary-General for the Democratic Republic of the Congo and representatives of the judiciary, the diplomatic corps and the United Nations system. He also met with international non-governmental organizations, political parties, religious leaders and national non-governmental human rights organizations.

8. In Bunia, the independent expert talked to representatives of the Government and MONUC, the civil, military and police authorities and members of civil society. He also visited the central prison and the holding cell at the police station.

9. These meetings and discussions revealed that while attention is being focused on the electoral process, lack of security, impunity and serious human rights violations remain cause for concern.

10. The independent expert has decided to focus in this report on the following issues:

(a) Massive violations of human rights;

(b) Justice;

(c) Impunity;

(d) The electoral process.

11. The independent expert also carried out other activities related to his mandate; he expressed opinions to the Government and replied to human rights communications concerning such issues as lack of security, disarmament and reintegration of militias, justice, the campaign against impunity and the ratification of international treaties. Following the massacres perpetrated in the night of 9 to 10 July 2005 in the village of Ntulumamba in Kivu, the independent expert issued a joint appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women to the Government authorities and MONUC. Concerning the electoral process, the independent expert took advantage of his recent mission to submit suggestions and proposals to the Minister of the Interior and members of the so-called "radical" opposition.

II. Status of the transition

A. Legislative efforts

12. In his report to the Commission on Human Rights at its sixty-first session, the independent expert referred to law and international treaties that he will not take up again in this report. He nevertheless wishes to emphasize the Government's efforts in promulgating legislation designed to restore law and order, in particular:

- Act No. 04/002 of 15 March 2004 on the organization and functioning of political parties;
- Act No. 04/023 of 12 November 2004 on the organization of defence and the armed forces.

13. In addition, during the parliamentary session which ended on 4 July 2005, several bills were adopted, in particular:

(a) The draft Constitution, solemnly adopted on 16 May 2005 and formally handed over by the President of the National Assembly, Mr. Olivier Kamitatu, to President Joseph Kabila, in the presence of the sponsor of the Global and All-Inclusive Agreement, Mr. Thabo Mbeki, President of South Africa;

(b) The Referendum Act, promulgated on 23 June 2005 by President Kabila;

(c) The approval on 17 June by the National Assembly and the Senate of a six-month extension of the transition period.

14. Despite the adoption of this important body of laws, however, equally essential work remains to be done by Parliament in this area in order successfully to complete the transition process. Laws need to be adopted on:

- The amnesty;
- The status of judges and magistrates;
- The Supreme Council of the Judiciary;
- The electoral process;
- The status of the political opposition;
- The funding of political parties.

B. The electoral process

15. The setting up of new democratic institutions for a new political order resulting from the Inter-Congolese Dialogue (ICD) in Sun City was a precondition for the holding of free, transparent and democratic election designed to put an end by the popular will to the crisis and sufferings endured by the Congolese people since they gained their independence (resolution DIC/CPJ/09 of 18 April 2002). It is in this context that Act No. 04/009 of 5 June 2004 on the organization, powers and functioning of the Independent Electoral Commission must be viewed, as well as Act. No. 04/24 of 24 December 2004 on the census and voter registration.

16. Since the appointment of its members in the provinces, the Independent Electoral Commission has worked on setting up its 11 provincial offices. It has also set up 64 liaison offices and 12 relay offices. Electoral materials have been distributed to 9,000 registration centres and 40,000 polling centres. Of necessity, voter registration is being carried out gradually.

17. The international community is strongly committed to supporting the pre-electoral process by mobilizing financial resources and suitable logistical resources. Because of the country's vastness, however, the Independent Electoral Commission, despite laudable efforts, is encountering serious problems in transporting census kits by air and securing registration offices and is one month behind schedule. As a result, some citizens will not be registered and will be unable to vote.

18. On 18 June 2005, 186 of the 221 registered political parties signed a code of conduct drawn up by the Independent Electoral Commission, outlining the principles for conducting the electoral process in a transparent, equitable, credible and non-violent manner.

19. On 20 June 2005, the Independent Electoral Commission launched the census and voter registration process in Kinshasa. This will continue throughout the country, with logistical support from MONUC.

20. The voter registration process in Kinshasa closed on 31 July 2005. Nearly 2.9 million people were registered, according to the Office of the High Commissioner for Human Rights, citing a report published by the Independent Electoral Commission.

21. The voter registration process begun on 25 July 2005 in Bas-Congo and Province Orientale continued on 7 August 2005 in the provinces of Kasai Oriental and Kasai Occidental and in Katanga amid widespread enthusiasm, according to observers.

22. It should be emphasized that this process sometimes encounters hostility in the eastern part of the country. For instance, 700 United Nations peacekeepers had to be deployed to Fataki, in Ituri, to secure the census and voter registration process. Despite all this, an electoral observer appointed by the local authorities was killed on 21 August at Bule, in Djugu territory, in an attack attributed to the armed group of Thomas Lubanga's Union des patriotes congolais (UPC).

23. At the practical level, the Chairman of the Independent Electoral Commission, Father Malu Malu, filed an application on 15 June 2005 for the transition period to be extended, given the situation on the ground. Under article 196 (2) of the Constitution, the two houses of Parliament, meeting to rule on this sensitive issue, decided to extend the transition period by six months, until 31 December 2005.

24. On Friday, 17 June 2005, Parliament's decision to extend the transition period by six months from 30 June 2005 was made public. The first round of combined legislative and presidential elections is due to take place on 20 March 2006. If a second round is needed, it will take place on 30 April 2006.

25. This decision aroused reactions. The Union pour la démocratie et le progrès social (UDPS), for instance, called on the population to demonstrate against the decision on 30 June 2005.

C. Cohesion of the political actors involved in the transition

26. At the end of the first 24 months of the transition, the political actors involved have adopted divergent and at times even antagonistic positions.

27. The contacts made among the Parti du peuple pour la reconstruction et la démocratie (PPRD), UDPS and the Parti lumumbiste unifié (PALU) concerning the appointment of some of their leaders to high-level posts in the Administration have not resulted in any agreements.

28. The decision to extend the transition period beyond 30 June 2005 has had the effect of hardening opposing positions, approaches and attitudes.

29. In order to preserve the fragile, hard-won peace, the political actors should opt for the approach of dialogue in order to prevent the situation from deteriorating.

D. Consolidation of the army and police

30. The Government has been making a census of members of the armed forces in order to bring their numbers under control and contain the wage bill.

31. Despite the joint efforts of the international community, in particular Belgium, France, the Netherlands, South Africa and Angola, the integration of the armed forces of the Democratic Republic of the Congo, the Congolese National Police and other security forces is far behind schedule.

32. The Structure militaire d'integration (SMI), the authority in charge of army integration, does not have the resources to impose integration on the former belligerents, who prefer to keep part of their armed forces in their strongholds in case the electoral process fails.

E. Disarmament and reintegration

33. The disarmament and community reintegration programme has made considerable progress: 15,607 combatants from a variety of militia groups, including 4,395 children, have been counted and 6,300 weapons seized. Coordination of the actions of State political and judicial authorities and MONUC has improved.

34. In Katanga, as part of a campaign called "Bicycles for Weapons" conducted from April to June 2005, the Congolese non-governmental organization Paix et réconciliation (PAREC) recovered 3,601 weapons, which were handed over to the military authorities on 7 July 2005.

F. Armed groups

35. The many armed groups operating essentially in the eastern part of the country, especially in Ituri, are gradually losing power, room to manoeuvre and the ability to do harm, as a result of the operations, sometimes necessarily forceful, of MONUC and Government forces.

36. The Forces armées du peuple congolais (FAPC) and the Union des patriotes congolais-Kisembo (UPC-K), for example, are gradually disappearing. UPC-Lubanga (UPC-L), the Front des nationalistes et intégrationnistes (FNI), the Forces de résistance patriotique de l'Ituri (FRPI) and the Parti pour l'unité et la sauvegard de l'intégrité territoriale du Congo (PUSIC) have now, proportionally, lost much of their strength.

G. Affirmation of the authority of the State and the judicial system

37. The eastern part of the country — especially Ituri, but also other areas considered rich in valuable ores and precious metals — was not under the State's authority, but the pockets outside its sovereignty are growing smaller.

38. On his visit to Ituri on 22 August, the independent expert noticed this change when he was able to leave the centre of Bunia to visit a voter registration centre. The presence of the Congolese armed forces and their joint operations with MONUC are clear signs of State authority, an authority also evidenced at the administrative and political level by the presence of the District Commissioner, whom the independent expert visited.

39. The independent expert saw further evidence of this presence of the State and exercise of its prerogatives in Ituri on 23 August 2005, when he attended trials involving warlords. He entered the courtroom as the individual known as Chief Kawa was called to the stand. Chief Kawa is the armed militia leader who in 2002 seized the then Minister for Human Rights, Professor Ntumba Luaba, and his delegation and held them hostage for several days.

40. With regard to military justice, the arrest and detention of Thomas Lubanga, General Floribert Ndjabu Ngabu and several other former militia leaders promoted to the rank of general for the sake of national reconciliation were welcomed by the population and show the State's determination to combat impunity.

41. At the judicial level, it should be noted that between 1 February and 30 April 2005, the Government arrested some members of the Congolese armed forces as part of its campaign to combat impunity.

42. While the Government is to be congratulated on its courage in making these arrests, however, many observers are sceptical that the cases will be prosecuted. They deplore the fact that, for many years now, crimes have continued to be committed on a vast scale against the civilian population, resulting in thousands of deaths.

43. The independent expert deplores the fact that a Bunia warlord, Jerôme Kakuavu, promoted to the rank of general of the Congolese armed forces and subsequently charged and sent to Kinshasa, was released as soon as he arrived in the capital.

44. These prosecutions are nonetheless welcome, since they restore public confidence in efforts to combat serious crime and impunity.

45. It is in the political arena that the drama of the impunity of the major actors is primarily being played out. The actions of human rights defenders require determination and strong convictions, given the real risks entailed. At the national level, the joint actions of the Ministry of Human Rights, the National Human Rights Monitoring Centre (ONDH), institutions and non-governmental human rights, organizations usually operating on a shoestring, are obviously to be welcomed and encouraged.

III. Massive human rights violations

46. The independent expert noted massive human rights violations at all levels.

47. Many observers of the national situation criticize the absence of discipline and of respect for the chain of command; local State employees, acting unilaterally and without instructions, assume responsibilities and compound the lack of State control. The supervisory authorities should take charge, act firmly and tightly control the functioning of the chain of command, in keeping with the rule of law.

A. Freedom of expression, opinion, assembly and peaceful demonstration

48. Articles 27 to 30 of the Transitional Constitution guarantee all persons the right to freedom of expression, assembly and peaceful demonstration. This year, however, freedom of expression and peaceful demonstration was sorely tested.

49. The Administration must refrain from sending in the forces of law and order to disperse unarmed demonstrators using disproportionate violence. The use of firearms with real bullets is prohibited. Political parties, for their part, must control their members and avoid harmful excesses.

50. After the Chairman of the Independent Electoral Commission issued an opinion concerning a possible postponement of the elections, riots broke out in Kinshasa on 10 January 2005, leaving four people dead.

51. In the days around 30 June 2005, popular demonstrations were held in response to the call by UDPS to protest against the extension of the transition period. The demonstrations were violently suppressed by the police and resulted in between 13 and 21 deaths, numerous injuries and hundreds of arrests, according to a variety of sources (MONUC, ONDH).

52. In a number of cities (Kinshasa, Mbuji-Mayi, Tshikapa), people who came out to march clashed with the forces of law and order. Given the number of people injured, several observers feel that the police response was disproportionate, considering the size of the demonstrations, which were smaller than predicted. Calls for moderation and calm from all sides helped considerably to defuse the situation.

B. Sexual violence

53. In his report to the Commission on Human Rights at its sixty-first session, the independent expert focused on this type of violence, which remains worrying, widespread and particularly grave. The present report will refer to only a handful of the thousands of cases of abuse known to have occurred throughout the territory.

54. In Equateur province, especially in the villages of Songo Mboyo and Bongandanga, 520 women and girls were raped on the night of 23 to 24 December 2004 by 80 members of the Congolese armed forces, formerly of the Mouvement pour la libération du Congo (MLC). Of the victims, 250 agreed to testify and receive assistance. Twenty-eight identified the soldiers who had raped them, 12 of whom were arrested. Thanks to vigorous action by Lawyers without Borders, OHCHR and MONUC, the accused will be tried by a military court on 4 October 2005 at Mbandaka, the capital of Equateur province.

55. The independent expert was also informed of collective rapes committed by the Forces démocratiques pour la libération du Rwanda (FDLR) in the eastern part of the country (Walikale territory, Kissimba group, villages of Katobi (three cases), Pety (two cases) and Bironga (one case)). The rapes occurred on 20 and 21 February 2005 and were reported in May 2005. The first victim was raped by four people, the second by five, the third by three, the fourth by 10 and the fifth, who was pregnant at the time, by 15 militiamen.

56. Thirty-four cases of sexual violence were recorded in Bunia; dozens of others were recorded in the provinces of Katanga, South Kivu, North Kivu, Maniema, Province Orientale and Equateur. According to MONUC, Doctors without Borders recorded 900 rapes in 2003 in Bunia, in Ituri District. On 17 June 2005, several girls aged 3 to 10 were raped by a civilian near Kalemie in Katanga.

C. Situation of children

57. The situation of children in the Democratic Republic of the Congo remains very worrying. On the occasion of the Day of the African Child, observed on 16 June 2005 in Kinshasa, the Child Protection Section of MONUC condemned the fact

that children were still victims of grave violations of human rights in the Democratic Republic of the Congo even though the conflict has abated.

58. A MONUC/Lubumbashi delegation found that over 100 children are working in a Chinese mining company in Lubumbashi. They work in dangerous and unhealthy conditions, cleaning and packaging ores for export bare-handed and without any protection against dust and toxic substances.

59. The tragedy of Congolese children is endless: from those used in armed conflict to street children to the massacre of "children for allegedly engaging in witchcraft". It is a situation that cries out for attention.

D. Refugees and internally displaced persons

60. According to the UNHCR office in Kinshasa, the Democratic Republic of the Congo ranks third in the world among countries of origin of refugees, with Congolese refugees totalling 462,000, just behind Sudan (730,000) and Afghanistan (2,084,900). According to UNHCR, there are still 150,000 Congolese refugees in the United Republic of Tanzania. The problem of internally displaced persons is extremely worrying. For instance, the July 2005 figure for Ituri was 208,705 such persons.

61. Records show that, during the period February to April 2005, 285 displaced persons returned to their places of origin in Kindu, Kalima and Kasongo, in Maniema province, under the pilot project for the protection, reintegration and social reinsertion of displaced persons carried out by the Ministry of Social Affairs in partnership with the agencies of the United Nations system.

62. On 20 May 2005, over 2,500 war-displaced persons were returned to their communities of origin on board the naval vessel M/B *Inga*, using the Congo River route from Kinshasa to Kisangani, via Mbandaka, Bumba and Lisala (Equateur).

E. The prison situation

63. On 23 August 2005, the independent expert visited the police holding cell in Bunia, designed to hold around 30 detainees. However, 130 people of all ages, and at all stages of the judicial process (police custody, pretrial detention, convicted minors and adults), are crammed in there.

64. The prison system is deplorable and inhumane and detention conditions are appalling. None of the Standard Minimum Rules for the Treatment of Prisoners is respected: there is no decent food, no health care, no separation of categories of detainees or cells and a complete lack of hygiene. Despite the laudable efforts of non-governmental organizations such as the International Prison Fraternity, resources are sorely lacking.

F. Freedom of movement

65. Many ambushes have been laid along main roads in the eastern part of the country, especially on the Goma-Rutshuru and Goma-Masisi roads (North Kivu), and freedom of movement is restricted. In South Kivu, members of the Congolese

armed forces, the National Intelligence Agency and FDLR have erected over 40 roadblocks on several roads. All these roadblocks are used to extort money and ransoms from the population.

G. Violations of physical integrity, disappearances, cruel and degrading treatment, torture, death threats and the death penalty

66. In the period from February to April 2005, cases of torture and other cruel, inhuman and degrading treatment of private individuals were reported.

67. One detainee died as a result of the torture and inhuman treatment inflicted on him. Such practices have been identified in prisons and holding cells in Kinshasa, Masisi, Goma and Lubumbashi.

68. Between February and April 2005, two death sentences were reported: one of a soldier sentenced by court martial at Mbandaka garrison (Equateur) and the other by court martial at Matadi garrison (Bas-Congo).

69. Between February and April 2005, a number of people were threatened and intimidated by both civilian and military security forces, mainly in Kinshasa and Katanga, because of their political opinions or those of family members. Several human rights campaigners were targeted, including Bar President Jean-Claude Muyambo, Chairman of the non-governmental development organization "Solidarité Katangaise", Floribert Chebeya, Chairman of "Voix des sans voix" and a number of human rights campaigners in Bukavu, Goma, Butembo and Lubumbashi.

70. With regard to enforced or involuntary disappearances, certain events were brought to the independent expert's attention. In April 2005, a news cameraman went missing after receiving threats from the security services in Kinshasa. On 12 February 2005, two women were abducted, each with her baby, in Rubare (North Kivu) and subsequently disappeared.

71. On 31 July 2005, a very active human rights campaigner, Pascal Kabungulu, Executive Secretary of the non-governmental organization "Héritiers de la justice" was murdered in his home by two unidentified men in uniform. The different pressures from civil society notwithstanding, the commission of inquiry set up by the Government is making no headway, for lack of resources.

IV. Justice, impunity and possible solutions

A. The internal justice system and impunity

72. Any evaluation of the functioning of justice must look primarily at the working conditions and resources of the Congolese judicial system.

73. The total amount allocated to the justice budget in 2003 was 482,485 billion Congolese francs (US$ 1.38 billion). Operational expenditures account for 3,014 billion Congolese francs, or 0.7 per cent of the total budget.

74. The ratio of judicial personnel to the total population is very low. If the number of strictly judicial personnel is divided by the number of inhabitants, the result is a derisory ratio of 0.000027:1. Likewise, if the number of judicial personnel

actually assigned to court proceedings is divided by the country's area, estimated at 2,344,885 square kilometres, the result is 0.0005 magistrates or judges per 1,000 inhabitants per square kilometre.

75. Judges' and magistrates' salaries range from US$ 13 for a local magistrate to US$ 30 for senior Supreme Court judges and prosecutors. It should nevertheless be noted that substantial monthly bonuses ranging from US$ 350 to US$ 500 are paid to all judges and magistrates. These bonuses are 15 to 20 times higher than the salaries of some judicial officials. An equally important distinction must be drawn between poor rural magistrates working in extremely difficult conditions and judges in urban areas who are guaranteed a minimum salary (see annex I, taken from the report of the organizational audit of the judiciary (May 2004)).

76. The independent expert also observed that clerks of the court also act as bailiffs in the Democratic Republic of the Congo.

77. Judges and magistrates have complained about their meagre salaries; some have waited four or five years to receive a tiny advance. With such working conditions, they are at the mercy of persons under their jurisdiction. The independent expert was told that judges and magistrates were driven to hearings by defendants. The financial independence of the judiciary is obviously vital for the proper functioning of the judicial system.

78. On 25 August 2005, the independent expert visited the High Military Court, the country's highest military court in Kinshasa, accompanied by the First President of the Court. The courtroom is simply a tent open to the rain and the elements.

79. Obviously, in such conditions crime cannot be counterbalanced. Judges cannot assert themselves, still less pass independent, fair and equitable judgements, since they are dependent on their accused for transport during their investigations. That being the case, there is no guarantee of protection for them if they question, arrest, try, convict or imprison a warlord. Judges and magistrates are not free to take decisions and have no protection against political or other pressures.

80. The existence of an independent and impartial judiciary and an independent bar is an essential prerequisite for ensuring the protection of human rights and guaranteeing that there is no discrimination in the administration of justice.

81. The internal justice system is powerless and lacks resources. The avenue currently indicated for functioning courts of law is the International Criminal Court.

B. The International Criminal Court: severe limits on the campaign against impunity

82. The Office of the Prosecutor of the International Criminal Court declared its intention to investigate the many crimes within its jurisdiction committed in the Democratic Republic of the Congo since 1 July 2002. A field office of the Prosecutor's Office has now been set up in Kinshasa and has begun its preliminary investigations.

83. It is clear from the foregoing that the International Criminal Court alone cannot satisfy the need to try all the crimes and serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, its jurisdiction being limited to acts committed since

the entry into force of the Rome Statute. What is needed, therefore, is a mechanism that would guarantee not only the effective suppression of war crimes and crimes against humanity, but also the administration of justice and an all-out campaign against impunity.

C. Establishment of a special international criminal tribunal or joint criminal chambers

84. In order to combat impunity, which must be done if there is to be peace in the country and further crimes are to be prevented, the independent expert recommends the creation of a special international tribunal or, failing that, joint criminal chambers to try crimes committed since 1994, the year specified in United Nations resolutions for serious violations of humanitarian law.

85. Certain measures could be taken to reduce the costs of a special tribunal: it could sit within the country, somewhere near its centre, in order to keep down the costs of transporting defendants and witnesses; the host State could be asked to consider providing premises and defraying certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the Democratic Republic of the Congo; and the host State could be responsible for appointing lawyers. Such matters would have to be settled under bilateral agreements.

86. Should it prove impossible to create an international tribunal, consideration could be given to establishing joint criminal chambers for the Democratic Republic of the Congo, which would come under the authority of the appeal courts and the Supreme Court of Justice.

87. As part of efforts to combat impunity and extremely serious crimes, joint criminal chambers could be attached to the appeal courts, with the right of appeal (preliminary and final appeal) to a chamber that is competent to hear it but which would come under the Supreme Court:

(a) Chambers of first instance could come under five appeal courts, one in Kinshasa and the other four strategically located throughout the country;

(b) Chambers of first instance could be composed of three judges (two nationals and one non-national, or vice versa);

(c) Courts of appeal could be composed of three judges (two non-nationals and one national, or vice versa);

(d) The Public Prosecutor's Office would also be involved in hearings and related work, on the basis of the same criteria.

88. The name of the institution could be the "Joint Criminal Chamber" and it would be responsible for trying persons accused of acts of genocide or other serious violations of international humanitarian law committed on the territory of the Democratic Republic of the Congo, as well as citizens of the Democratic of the Congo accused of committing such acts or violations on the territory of neighbouring States.

89. Such an institution would be more flexible and less costly should the creation of a special international criminal tribunal prove unfeasible. It should nevertheless receive full support from the international community, given the country's current

destitution. The new joint criminal chambers should also contribute to restoring the country's judicial system (in terms of staff, training, equipment and living and working conditions).

V. Recommendations

90. **The independent expert recommends to all the Congolese parties, whether or not signatories to the Global and All-Inclusive Agreement, that they should:**

- **Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration, national unity and patriotism; persuade the population to work for national construction and the rejection of discrimination in all its forms and to combat defeatism, fatalism and despair.**
- **Recognize the need for all political actors to foster the culture of dialogue and rejection of violence or incitement to violence and ethnic hatred.**

91. **The independent expert recommends to the Government of National Unity and Transition that it should:**

- **Take all necessary measures to affirm and consolidate the State's authority over the entire territory.**
- **Ensure the effective integration, reunification, reinforcement and equipment of the army and police.**
- **Improve the currently precarious and inadequate physical, intellectual and equipment conditions of institutions and employees of the State, especially the judiciary, so that it can respond effectively to the requirements of justice and the fight against impunity.**
- **Combat the trafficking and illegal exploitation of natural resources.**
- **Combat all the crimes that continue to be committed, particularly rape and sexual violence against women and children as a weapon of war and arson of homes and property.**
- **Combat the continuing use of children for war and related purposes; combat militias and privately-armed groups and prevent them from rearming.**
- **Combat the impunity which gives rise to crime.**
- **Work to enhance the status of women, protect them and help them to fulfil their potential.**
- **Dismiss from the Government and institutions all alleged perpetrators of crimes against humanity and serious human rights violations.**

92. **At the international level, the expert recommends that:**

(a) **The international community should:**

- **Support the transition to permit the establishment of the rule of law and a culture of lasting peace.**

- **Support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police.**

- **Increase its support (personnel, financial, equipment) for MONUC to enable it, in support of the Congolese armed forces, to meet the various challenges posed by the constant crime and unrest within the country and on its borders.**

- **Assist the field office of the Office of the High Commissioner for Human Rights in the Democratic Republic of the Congo in implementing its programmes and activities.**

- **Provide all necessary assistance to enable the independent expert to fulfil his mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate.**

(b) **That the Commission on Human Rights, the General Assembly, the Security Council and the Economic and Social Council should:**

- **Given the destitution of the judicial system in the Democratic Republic of the Congo and the scale of the crimes being perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, consider the creation of joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002.**

Annex I

Judicial staff (Audit*)

Number of judges, prosecutors, magistrates, clerks of the court and other judicial staff

A.	Judges and magistrates	375
B.	Prosecutors	1 575
		1 950
C.	Clerks and bailiffs	
	Kinshasa	453
	Interior	576
		1 029
D.	Prosecution clerks	
	Kinshasa	496
	Interior	336
		832
E.	Criminal investigation officers	
	Kinshasa	289
	Interior	161
		450
F.	Prison staff	
	Kinshasa	209
	Interior	150
		359
G.	Trial lawyers	
	Kinshasa-Gombe bar	620
	Kinshasa-Matete bar	135
		755

* *Source*: Report of Professor Joseph Mvioki, prepared as part of the mission (cited in the report of the organizational audit of the judiciary, May 2004).

Annex II

Monthly salaries of Congolese judges, prosecutors and magistrates as at 15 May 2003*

	Congolese francs	*United States dollars*
Supreme Court of Justice		
First President	12 600	30
Office of the Attorney-General of the Republic		
Attorney-General	13 425	32
Court of Appeal		
First President	9 265	22
State Prosecution Service		
State Prosecutor	9 265	22
Court of major jurisdiction		
President	7 475	17.75
Prosecution service of major jurisdiction		
Public Prosecutor	12 175	29
Magistrates' courts		
Magistrates	5 990	14.26

* *Source*: Annex to the report of Professor Akele, prepared in connection with a preparatory support mission requested by UNDP, 1999, p. 39.

Annex III

Individuals and institutions that the independent expert met in August 2005

Kinshasa

- The Minister for Foreign Affairs
- The Minister for Human Rights
- The Minister for Social Affairs
- The Minister of the Interior
- The President of the National Assembly
- The President of the Senate
- The Chairman of the National Human Rights Monitoring Centre
- The Chairman of the Independent Electoral Commission
- The Chairman of the Media Authority
- The Chairman of the Truth and Reconciliation Commission
- The Chairman of the Ethics and Anti-Corruption Commission
- The Chairman of the Standing Committee on the Reform of Congolese Law (three meetings with the Minister of Justice were cancelled at the Ministry's request)
- The First President of the Supreme Court
- The First President of the High Military Court
- The Auditor-General of the Congolese armed forces
- The Attorney-General of the Republic
- The Special Representative of the Secretary-General for the Democratic Republic of the Congo, Mr. William Swing, Director of MONUC
- The Director of the field office of the Office of the High Commissioner for Human Rights (several meetings with the office)
- Ambassadors
- Representatives responsible for technical cooperation and donors
- The Director of the Human Rights Section (MONUC)
- The Head of the Child Protection Section (MONUC)
- Heads of missions of the United Nations system
- UNFPA
- UNICEF
- International organizations

- The Executive Secretary of PPRD
- The Executive Secretary of UDPS
- The President of PALU
- The Vice-President of the Forces novatrices pour l'union et la solidarité (FONUS)
- The Head of the Catholic Church
- The Head of the Protestant Church
- The Head of the Kimbanguist Church
- National organizations for the promotion and protection of human rights

Bunia (Ituri)

- The District Commissioner
- The President of the Court of Major Jurisdiction and the Public Prosecutor
- The President of the Military Court and the Military Auditor
- The Commander of the Congolese armed forces
- The Police Supervisor
- The Commander of the Congolese National Police
- The Commander of the Ituri Brigade
- The Director of MONUC
- The Human Rights and Child Protection Department
- Non-governmental human rights organizations
- Officers of court defenders' associations
- Visit to the central prison and to the police station holding cell

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Report of the Economic and Social Council

Programme budget for the biennium 2004-2005

Proposed programme budget for the biennium 2006-2007

Revised estimates resulting from resolutions and decisions adopted by the Economic and Social Council at its resumed organizational and first substantive sessions of 2005

Report of the Secretary-General

Summary

The present report details budgetary requirements resulting from resolutions and decisions adopted by the Economic and Social Council at its resumed organizational and first substantive sessions of 2005. The expenditure requirements arising as a result of those resolutions and decisions are estimated at $4,143,300, of which $3,571,300 could be absorbed within the resources provided for either the 2004-2005 or the 2006-2007 biennium. The remaining requirement of $572,000 for appropriation for the biennium 2006-2007 would be subject to the procedures established by the General Assembly in its resolutions 41/213 of 19 December 1986 and 42/211 of 21 December 1987.

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I. Introduction

1. The present report is submitted to inform the General Assembly of the requirements resulting from resolutions and decisions adopted by the Economic and Social Council at its resumed organizational and first substantive sessions of 2005.

2. The Council adopted a number of resolutions and decisions in which it authorized relevant functional commissions, standing committees or expert bodies to undertake additional activities, including meetings, in excess of the resources approved in the 2004-2005 programme budget[1] and the estimates in the proposed programme budget for the biennium 2006-2007.[2] In accordance with rule 31 of its rules of procedure, the Council was provided, where appropriate, with a statement of programme budget implications prior to the adoption of those resolutions and decisions. The additional requirements entailed by the Council's resolutions and decisions are described below.

3. With regard to additional conference-servicing requirements, in each relevant case the Council was informed of the full cost of the additional services to be provided and any potential for absorption of the requirements within the approved appropriations, as applicable. On that basis, it was indicated to the Council that net additional resources would be required under section 2, General Assembly and Economic and Social Council affairs and conference management, of the programme budget for the biennium 2004-2005 and 2006-2007, section 29E, Administration, Geneva, of the programme budget for the biennium 2004-2005 and section 28E, Administration, Geneva, of the proposed programme budget for the biennium 2006-2007. Subsequently, however it was determined that there is every likelihood that the additional expenses envisaged for the present biennium could be accommodated within the resources available within the revised appropriation for the biennium 2004-2005. The actual expenditures associated with these requirements will be reported to the General Assembly in the context of the second performance report on the programme budget for the biennium 2004-2005.

4. In its report on the revised estimates resulting from resolutions and decisions adopted by the Economic and Social Council at its substantive session of 1999 (A/54/7/Add.2), the Advisory Committee on Administrative and Budgetary Questions requested that future reports on the subject contain full cost estimates, including both conference and non-conference costs, of additional requirements. In response to that request, the additional requirements resulting from the resolutions and decisions adopted by the Council in 2005 to be financed from the existing provisions of the programme budget for the biennium 2004-2005 and in addition to the proposed programme budget for the biennium 2006-2007 are indicated in the annex to the present report.

II. Additional requirements entailed by resolutions and decisions adopted by the Economic and Social Council

A. Resolution 2005/5: Support to the Bureau in preparing for future sessions of the Commission on Sustainable Development

5. By operative paragraphs 1 and 2 of resolution 2005/5, the Council decided:

(a) That in order for members of the Bureau to carry out their functions effectively, consideration should be given to providing financial support consisting of travel and daily subsistence to members of the Bureau from developing countries and countries with economies in transition, through designated extrabudgetary contributions to the Trust Fund to Support the Work of the Commission on Sustainable Development;

(b) That financial support to members of the Bureau from developing countries and countries with economies in transition should cover participation in one of the meetings of the Bureau to be held outside New York and the respective regional implementation meeting and other relevant meetings in the region.

6. The activities to be carried out relate to subprogramme 4, Sustainable development, of programme 7, Economic and social affairs, of the biennial programme plan for the period 2006-2007 and section 9 of the proposed programme budget for the biennium 2006-2007.

7. **Resolution 2005/5 does not entail additional resources over and above those requested in the proposed programme budget for the biennium 2006-2007, which will be considered by the General Assembly at its sixtieth session. It is estimated, however, that the resources of $126,400 required to meet travel and daily subsistence allowance of members of the Bureau would need to be available under the Trust Fund to Support the Work of the Commission on Sustainable Development in order to implement the terms of the resolution.**

B. Resolution 2005/6: Support for the travel of representatives from developing countries and countries with economies in transition to future sessions of the Commission on Sustainable Development

8. By operative paragraph 2 of resolution 2005/6, the Council recommended that the General Assembly decide that support to participants from developing countries, with priority given to the least developed countries, as well as countries with economies in transition, may be provided from the Trust Fund for travel from funds designated for that purpose.

9. The activities to be carried out relate to subprogramme 4, Sustainable development, of programme 7, Economic and social affairs, of the biennial programme plan for the period 2006-2007 and section 9 of the proposed programme budget for the biennium 2006-2007.

10. On the basis of recent experience it is assumed that such financial support would consist of only travel costs and not per diem for up to 100 representatives. Accordingly, it is estimated that an amount of $1,500,000 would be required for attendance at the fourteenth session of the Commission on Sustainable Development (review session), the intergovernmental preparatory meeting for the fifteenth session of the Commission and the fifteenth session (policy session), to be held in the biennium 2006-2007.

11. **Resolution 2005/6 would not entail additional resources over and above those requested in the proposed programme budget for the biennium 2006-2007, which will be considered by the General Assembly at its sixtieth session. It is estimated, however, that resources of $1,500,000 would need to be available**

to meet the requirements of participants from developing countries to travel to meetings of the Commission on Sustainable Development under the Trust Fund to Support the Work of the Commission on Sustainable Development.

C. Resolution 2005/29: Report of the United Nations Forum on Forests on its fifth session and provisional agenda for its sixth session

12. By operative paragraphs 4 and 5 of resolution 2005/29, the Economic and Social Council decided to hold the sixth session of the Forum from 13 to 24 February 2006 in New York and also decided that the Forum, at its sixth session, should consider the venue and dates of its seventh session.

13. Provisions would be required in 2006 for the servicing of a total of 40 meetings, with 4 meetings per day (2 in the morning and 2 in the afternoon) and with interpretation services in all six languages. Documentation requirements are estimated at 674 (double-spaced) pages of pre-session, 50 pages of in-session and 32 pages of post-session documents to be processed in all six languages. As the venue and dates of the seventh session will be decided by the Forum at its sixth session, in accordance with the headquarters principle, costing for the seventh session is based on the conference-servicing requirements for the sixth session.

14. The dates and venue for the sixth session will be included in the draft calendar of conferences and meetings of the United Nations for the biennium 2006-2007. As for the seventh session, the venue will be listed as New York in the draft calendar according to the headquarters principle and paragraph 15 of Economic and Social Council resolution 2000/35, in which the Council requests the Secretary-General, in proposing future United Nations programme budgets, to include provisions for the United Nations Forum on Forests and its secretariat.

15. **The conference-servicing requirements for the sixth and seventh sessions of the United Nations Forum on Forests are estimated at $1,303,500 per session on a full-cost basis, or a total of $2,607,000. Provisions for the sessions have been made in the proposed programme budget for the biennium 2006-2007. Therefore, no additional appropriation is required.**

D. Resolution 2005/46: Ad Hoc Advisory Group on Haiti

16. By operative paragraphs 3, 4 and 8 of resolution 2005/46, the Council:

(a) Decided to extend the mandate of the Advisory Group until the substantive session of the Economic and Social Council in July 2006, with the purpose of following closely and providing advice on Haiti's long-term development strategy to promote socio-economic recovery and stability, with particular attention to the need to ensure coherence and sustainability in international support for Haiti, based on the long-term national development priorities, building upon the Interim Cooperation Framework and stressing the need to avoid overlap and duplication with respect to existing mechanisms;

(b) Expressed its satisfaction to the Secretary-General for the support provided to the Advisory Group and requested him to continue to support the Group's activities adequately;

(c) Decided that the work of the Advisory Group would be reviewed at the substantive session of 2006, with a view to considering whether to continue its mandate, based on the Council's consideration of the report of the Advisory Group and of the situation then prevailing in Haiti.

17. Support to be provided to the Ad Hoc Advisory Group would consist of travel, daily subsistence allowance and terminal expenses for four members of the Group and one staff member of the Department of Economic and Social Affairs to undertake a mission to Haiti in April 2006.

18. The resource requirements to undertake the consultation mission are estimated at $13,500 and would provide for travel, daily subsistence allowance and terminal expenses ($11,500 for four members of the Advisory Group and $2,000 for one staff member of the Department of Economic and Social Affairs). These resources have not been provided in the proposed programme budget for 2006-2007. The potential for absorption of the requirements of $13,500 within the estimates proposed under section 9, Economic and social affairs, of the proposed programme budget for the biennium 2006-2007 has been considered, and it is anticipated that it will not be possible to absorb the additional costs. **These requirements would need to be met through an additional appropriation by the General Assembly.**

19. **It is anticipated that the conference-servicing costs required for servicing the Advisory Group would be negligible and would therefore be met within resources to be made available under section 2, General Assembly and Economic and Social Council affairs and conference management, of the proposed programme budget for the biennium 2006-2007. Accordingly, no additional appropriation is required.**

E. Decision 2005/217: Reform proposed by the Secretary-General in the area of human rights

20. By its decision 2005/217, the Economic and Social Council:

(a) Bearing in mind General Assembly resolutions 59/145 of 17 December 2004 and 59/291 of 15 April 2005, in which the Assembly, inter alia, requested the President of the General Assembly to continue to hold open, inclusive and transparent consultations with all Member States with a view to reaching the broadest possible agreement on all major issues relating to the High-level Plenary Meeting of the General Assembly to be held in September 2005, and also taking note of Commission on Human Rights decision 2005/116, decided to request the Chairperson of the Commission on Human Rights to organize, at the Commission's sixty-first session, an open-ended informal consultation of up to two days to reflect on the recommendations on human rights contained in the report of the Secretary-General entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005 and Corr.1 and Add.1-3) with a view to contributing to the intergovernmental deliberations to be held in the Assembly on the proposed reforms of the United Nations;

(b) To that end also decided to authorize the Chairperson to prepare a summary of the informal consultation by 15 June 2005, to be transmitted to the President of the General Assembly through the President of the Economic and Social Council.

21. The decision would require provisions for conference servicing for the biennium 2004-2005 as follows:

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	55 900
Section 29E. Administration, Geneva	1 400
Total	**57 300**

22. No provisions have been made for these requirements under the programme budget for the biennium 2004-2005. **However, every effort will be made to absorb the requirements from within the revised appropriation for that biennium. Actual expenditures associated with this activity will be reported to the General Assembly in the context of the second performance report on the programme budget for the biennium 2004-2005.**

F. Decision 2005/252: International expert group meeting on the Millennium Development Goals, indigenous participation and good governance

23. By its decision 2005/252, the Economic and Social Council decided to authorize a three-day international expert group meeting on the Millennium Development Goals, indigenous participation and good governance, with the participation of representatives of the United Nations system and three members of the Permanent Forum on Indigenous Issues, invited other interested intergovernmental organizations, experts from indigenous organizations and interested Member States to participate as well and requested the meeting to report to the Forum at its fifth session under the special theme of that session.

24. At the fourth session of the Permanent Forum on Indigenous Issues, an oral statement of programme budget implications concerning draft decision I, entitled "International expert group meeting on Millennium Development Goals, indigenous participation and good governance" (E/C.19/2005/L.11), was presented to the Forum. In the statement the Secretariat informed the Forum, inter alia, that the need for an additional appropriation of $179,800 to provide conference services to the international expert group meeting called for in the draft decision would be dealt with in accordance with procedures established by the General Assembly in its resolutions 41/213 and 42/211.

25. **Since the fourth session of the Permanent Forum on Indigenous Issues, the Secretariat has reviewed the services requested for the proposed meeting and determined that, consistent with established practice, conference services for meetings of this nature, as required, would be provided on an as-available basis. Therefore, no additional appropriation is required.**

G. Decision 2005/255: The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

26. In its decision 2005/255, the Council took note of Commission on Human Rights resolution 2005/2 and endorsed the Commission's decision to establish a working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, to be composed of five independent experts, one from each regional group, to meet intersessionally for a period of three years, with the following mandate:

(a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the rights of people to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;

(b) To seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate;

(c) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;

(d) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

(e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.

27. The Council also endorsed the request of the Commission to the working group to report annually to the Commission and the General Assembly.

28. Activities envisaged in connection with the establishment of a working group would require provisions for consultancies ($15,000 per year, or $45,000 for the three-year mandate), travel and subsistence for the experts ($49,300 annually, or $147,900 for the three-year mandate) to attend the meetings of the group and to undertake annual field missions, and travel and subsistence for the Chairman of the group ($13,300 annually, or $39,900 for the three-year mandate). The full cost of these requirements under section 24, Human rights, of the programme budget for the biennium 2004-2005 amount to $77,600.

29. Meetings of the working group would require further annual provisions for conference services for five days' duration in the amount of $107,100 for the biennium 2004-2005, as follows:

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	103 800
Section 29E. Administration, Geneva	3 300
Total	**107 100**

30. Total conference-servicing requirements for the three-year mandate would amount to $321,300.

31. No provisions have been made under the programme budget for the biennium 2004-2005 for the travel requirements of the working group and its Chairman or for the associated consultancy and conference-servicing requirements. **Nonetheless, every effort will be made to accommodate the requirements from within the revised appropriation for the biennium 2004-2005 and, within the context of the second performance report on the programme budget for the biennium 2004-2005, the actual expenditures associated with this activity will be reported to the General Assembly.**

32. **No provisions have been made for the travel and conference-servicing requirements of the working group in the proposed programme budget for 2006-2007. It is estimated that additional requirements would amount to $155,200 under section 23, Human rights, $207,600 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $6,600 under section 28E, Administration, Geneva.**

H. Decision 2005/256: The right to development

33. By its decision 2005/256, the Economic and Social Council, taking note of Commission on Human Rights resolution 2005/4, approved the decision of the Commission to renew for one year the mandate of the open-ended working group established to monitor and review progress made in the promotion and implementation of the right to development and to convene its seventh session before the sixty-second session of the Commission for a period of 10 working days, 5 of which would be allocated to the second meeting of the high-level task force on the right to development, to be held well in advance of the session of the working group.

34. The five-day task force meeting and five-day session of the working group would require provisions for conference servicing for the biennium 2004-2005 as follows:

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	341 600
Section 29E. Administration, Geneva	6 600
Total	**348 200**

35. Provisions related to the extension of the mandate of the working group and the meetings of the high-level task force and the working group have been included under section 2, General Assembly and Economic and Social Council affairs and conference management, section 29E, Administration, Geneva, of the programme budget for the biennium 2004-2005 and section 28E, Administration, Geneva, of the proposed programme budget for the biennium 2006-2007. **Hence, the adoption of the resolution would not entail additional conference-servicing requirements.**

36. Activities envisaged in connection with the meeting of the task force would require provisions for travel and subsistence and the commissioning of four expert papers. The full costs of such requirements amount to $89,300 under budget section 24, Human rights, for the biennium 2004-2005. **No provisions have been made under the programme budget for the biennium 2004-2005 for these requirements. However, it is anticipated that the costs could be absorbed within overall resources included in the programme budget for the biennium under section 24.**

37. Resources for travel and subsistence would also be required in connection with the report of the Chairman of the high-level task force to the working group at its meeting in early 2006. No provisions have been made for these requirements in the proposed programme budget for 2006-2007. **It is estimated that additional requirements would amount to $6,500 under section 23, Human rights.**

I. Decision 2005/260: Effects of economic reform policies and foreign debt on the full enjoyment of all human rights

38. By its decision 2005/260, the Economic and Social Council took note of Commission on Human Rights resolution 2005/19 and endorsed the Commission's decision to request the independent expert to report to the General Assembly on the issue of the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights.

39. The Council also endorsed the Commission's request for the Secretary-General to provide the independent expert with all necessary assistance, in particular the staff and resources required to carry out his functions, as well as to facilitate his participation in and contribution to the follow-up process of the International Conference on Financing for Development, including in the multi-stakeholder consultations to be organized in 2005 on issues relevant to his mandate.

40. As decided by the Commission on Human Rights, expert consultations of three working days are proposed to be convened to contribute to the report of the independent expert. This would require provisions for conference servicing under the programme budget for 2004-2005 as follows:

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	82 600
Section 29E. Administration, Geneva	1 900
Total	**84 500**

41. **While no provision has been made in the budget to convene the expert consultation of three working days, it is anticipated that the estimated costs will be able to be accommodated within the revised appropriation for the biennium 2004-2005. In the context of the second performance report on the programme budget for the biennium 2004-2005, the actual expenditures incurred for this activity will be reported to the General Assembly.**

42. In addition, provisions for travel and subsistence for four experts (including two from debtor countries) and for consultancy would be required in connection with the expert consultations. The total costs of such requirements would amount to $43,400. **No provisions have been made for these activities in the programme budget for the biennium 2004-2005. However, it is anticipated that the costs could be absorbed within overall resources included in the programme budget for the biennium under section 24, Human rights.**

43. The provision of $17,500 for travel and subsistence for the independent expert, an expert of the Committee on Economic, Social and Cultural Rights and the special rapporteurs on economic, social and cultural rights would also be required in connection with the expert consultation. Their respective mandates fall under the category of activities considered to be of a perennial nature, provisions for which have already been included in the programme budget for the biennium 2004-2005 under section 24. **Hence, no additional appropriation would be required in this regard.**

44. Resources for travel and subsistence, as well as for temporary assistance, for the independent expert would amount to $21,900 in the biennium 2004-2005 under section 24. The mandate of the independent expert falls under the category of activities considered to be of a perennial nature. Provisions for activities of this nature have already been included in the programme budget for the biennium 2004-2005. **Hence, no additional appropriation would be required.**

J. Decision 2005/273: Human rights and transnational corporations and other business enterprises

45. By its decision 2005/273, the Economic and Social Council took note of Commission on Human Rights resolution 2005/69 and approved the request of the Commission to the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises for an initial period of two years, to undertake the activities set out in that resolution.

46. The Council also endorsed the Commission's request to the United Nations High Commissioner for Human Rights to convene annually, in cooperation with the special representative, a meeting with senior executives from companies and experts from a particular sector, such as the pharmaceutical, extractive or chemical industries, to consider, within the mandate of the special representative as set out in operative paragraph 1 of the resolution, the specific human rights issues faced by those sectors, to raise awareness and share best practices and to report on the outcome of the first meeting to the Commission at its sixty-second session.

47. The full cost of the activities of the special representative would amount to $39,100 under section 24, Human rights, in the biennium 2004-2005 and $39,100 under section 23, Human rights, in the biennium 2006-2007.

48. The mandate of the special representative falls under the category of activities considered to be of a perennial nature. Provisions for activities of this nature have already been included in the programme budget for the biennium 2004-2005 and in the proposed programme budget for the biennium 2006-2007. Hence, no additional appropriation would be required as a result of the adoption of the resolution.

49. The meeting with senior executives of companies would require annual provisions for conference servicing as follows:

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	44 300
Section 29E/28E. Administration, Geneva	1 400
Total	**45 700**

50. No provisions have been made under the programme budget for the biennium 2004-2005 to convene the meeting called for in paragraph 5 of the resolution. **However, every effort will be made to absorb the requirements from within the revised appropriation for the biennium. Actual expenditures associated with this activity will be reported to the General Assembly in the context of the second performance report on the programme budget for the biennium 2004-2005.**

51. Likewise, no provision has been made in the proposed programme budget for 2006-2007 for the conference-servicing requirements of the meeting to be held in 2006. It is estimated that additional requirements would amount to $44,300 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $1,400 under section 28E, Administration, Geneva. **These additional requirements would need to be met through an additional appropriation by the General Assembly.**

52. In addition, provisions for travel and subsistence for five experts in the amount of $25,500 in connection with the meeting would be required under section 24, Human rights, in the biennium 2004-2005. No provision has been made for these requirements. It is anticipated, however, that the costs could be absorbed within overall resources included in the programme budget for this biennium under section 24. **Therefore, no additional appropriation is required.**

53. Resources for travel and subsistence for five experts in connection with the meeting would also be required in 2006. No provision has been made for these requirements in the proposed programme budget for 2006-2007. It is estimated that additional requirements would amount to $25,500 under section 23, Human rights. **These requirements would need to be met through an additional appropriation by the General Assembly.**

K. Decision 2005/278: Rights of persons belonging to national or ethnic, religious and linguistic minorities

54. By its decision 2005/278, the Economic and Social Council took note of Commission on Human Rights resolution 2005/79 and endorsed the Commission's request to the High Commissioner for Human Rights to appoint an independent expert on minority issues for a period of two years, with the following mandate:

(a) To promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities;

(b) To identify best practices and possibilities for technical cooperation by the Office of the United Nations High Commissioner for Human Rights at the request of Governments;

(c) To apply a gender perspective in his or her work;

(d) To cooperate closely, while avoiding duplication, with existing relevant United Nations bodies, mandates, mechanisms and regional organizations;

(e) To take into account the views of non-governmental organizations on matters pertaining to his or her mandate.

55. The Council also endorsed the request of the Commission to the independent expert to submit annual reports on his or her activities to the Commission, including recommendations for effective strategies for the better implementation of the rights of persons belonging to minorities.

56. The Council further endorsed the Commission's request to the Secretary-General to provide all the necessary resources, from within existing budgetary resources, for the effective fulfilment of the mandate of the independent expert.

57. The Council endorsed the decision of the Commission to amend the mandate of the Working Group on Minorities of the Subcommission on the Promotion and Protection of Human Rights with a view to the Working Group holding one session of three consecutive working days annually during the time of the annual session of the Subcommission, focusing its work on interactive dialogue with relevant non-governmental organizations and on conceptual support of and dialogue with the independent expert, who shall participate as an observer.

58. Total full costs of the activities envisaged under this decision amount to $78,100 under section 24, Human rights, in the biennium 2004-2005 and $156,200 under section 23, Human rights, in the biennium 2006-2007. The mandate of the independent expert falls under the category of activities considered to be of a perennial nature. Provisions for activities of this nature have already been included in the programme budget for the biennium 2004-2005 and in the proposed programme budget for the biennium 2006-2007. **Hence, no additional appropriation would be required as a result of the adoption of the resolution.**

59. **The amendment of the mandate of the Working Group, as envisaged under operative paragraph 9 of the resolution, would make available the amount of $72,200 for other mandates under section 23, Human rights, of the proposed programme budget for the biennium 2006-2007.**

60. Conference-servicing provisions related to the mandate of the Working Group have been included in the programme budget for the biennium 2004-2005 and the proposed programme budget for the biennium 2006-2007. **Hence, the adoption of the resolution would not entail additional conference-servicing requirements.**

L. Decision 2005/285: Promotion of the realization of the right to drinking water and sanitation

61. By its decision 2005/285, the Economic and Social Council took note of Commission on Human Rights decision 2005/106, endorsing the Commission's request that the reports (E/CN.4/Sub.2/2002/10, E/CN.4/Sub.2/2003/WP.3 and

E/CN.4/Sub.2/2004/20) of the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights on the conduct of a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation at the national and international levels be published in the official languages of the United Nations.

62. The full cost of the activities envisaged under this decision would amount to $26,400 under section 2, General Assembly and Economic and Social Council affairs and conference management, of the programme budget for the biennium 2004-2005. **It is anticipated that the costs could be absorbed within the overall resources included in the programme budget for this biennium under section 2.**

M. Decision 2005/286: Terrorism and human rights

63. By its decision 2005/286, the Economic and Social Council took note of Commission on Human Rights decision 2005/107 and endorsed the Commission's recommendation that a compilation into a comprehensive document of all the reports and documents submitted to date by the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights on terrorism and human rights be published as a United Nations publication as part of the *Human Rights Study Series*.

64. The full cost of the activities envisaged under decision 2005/286 would amount to $14,000 under section 24, Human rights, for 2004-2005. No provision has been made under the programme budget for these requirements. It is anticipated, however, that the costs could be absorbed within overall resources included in the programme budget for this biennium under section 24. **Therefore, no additional appropriation is required.**

N. Decision 2005/289: Final report on the study on indigenous peoples' permanent sovereignty over natural resources

65. By its decision 2005/289, the Economic and Social Council took note of Commission on Human Rights decision 2005/110 and endorsed the Commission's recommendation to authorize the Office of the High Commissioner for Human Rights to convene an expert seminar during 2005, to which representatives of indigenous peoples and Governments, as well as the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights, would be invited, in order to give further attention to and to discuss in detail the many political, legal, economic, social and cultural aspects relating to the study on indigenous peoples' permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30), as well as to the study entitled "Indigenous peoples and their relationship to land" (E/CN.4/Sub.2/2001/21).

66. Convening the expert seminar would require a provision of $55,200 to cover travel and subsistence requirements for the participants in the seminar, including the Special Rapporteur, and conference-servicing provisions of $57,000. It is anticipated that the total cost of $112,200 would be covered from extrabudgetary

resources available to the Office of the United Nations High Commissioner for Human Rights. **Hence, no additional appropriation would be required.**

67. The Council also endorsed the Commission's recommendation that the studies be issued as United Nations publications as part of the *Human Rights Study Series*.

68. All the reports of the Special Rapporteur are available in the Official Document System of the United Nations, to which free public access has been provided via the Internet. The hard copies of the reports could be obtained from the United Nations information centres and libraries around the world and from the information desk of the Office of the United Nations High Commissioner for Human Rights and its field offices. **Hence, no additional appropriation would be required**.

O. Decision 2005/290: Enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights

69. By its decision 2005/290, the Economic and Social Council took note of Commission decision 2005/113 and endorsed the decision of the Commission to request the United Nations High Commissioner for Human Rights to organize an open-ended seminar in 2005 from within existing resources, in consultation with the expanded Bureau of the Commission, as part of the effort to enhance and strengthen the effectiveness of the special procedures and to submit a report on the implementation of decision 2005/113 to the Commission at its sixty-second session.

70. The activities envisaged in connection with organizing the open-ended seminar would require provisions under section 24, Human rights, of the programme budget for the biennium 2004-2005 for: (a) travel and subsistence for the eight special procedures mandate-holders, totalling $43,800, and (b) communications and miscellaneous administrative costs of $1,500. No provision has been made under the programme budget for the biennium 2004-2005 for travel, subsistence and miscellaneous requirements. However, it is anticipated that the costs could be absorbed within overall resources included in the programme budget for this biennium under section 24, Human rights. **Therefore, no additional appropriation is required.**

71. Preparation of the seminar would also require a provision for consultancy services of $15,000 under section 24, Human rights, of the programme budget for the biennium 2004-2005. It is anticipated that those costs could be absorbed within the overall extrabudgetary resources of the Office of the United Nations High Commissioner for Human Rights. **Therefore, no additional appropriation is required.**

P. Decision 2005/292: Organization of work of the sixty-second session of the Commission on Human Rights

72. By its decision 2005/292, the Economic and Social Council took note of Commission on Human Rights decision 2005/115 and authorized six fully serviced additional meetings, including summary records, in accordance with rules 29 and 31 of the rules of procedure of the functional commissions of the Council, for the Commission's sixty-second session.

73. The Council also requested the Chairperson of the sixty-second session of the Commission to make every effort to organize the work of the session within the time normally allotted so that the additional meetings which the Council might authorize would be utilized only if they proved to be absolutely necessary.

74. The full cost of conference services envisaged under decision 2005/292 would amount to $169,400 in 2006, as follows:

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	162 800
Section 28E. Administration, Geneva	6 600
Total	**169 400**

75. **No conference-servicing provisions have been made for the six additional meetings in the proposed programme budget for the biennium 2006-2007. Therefore, an additional appropriation by the General Assembly would be required of $162,800 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $6,600 under section 28E, Administration, Geneva.**

Q. Decision 2005/295: Convention on the Prevention and Punishment of the Crime of Genocide

76. By its decision 2005/295, the Economic and Social Council took note of Commission on Human Rights resolution 2005/62 and endorsed the Commission's request to the Secretary-General to make available to the Commission at its sixty-second session a report on the implementation of his five-point action plan and on the activities of the Special Adviser on the prevention of genocide, as well as its invitation to the Special Adviser to address the Commission at the same session and at the sixty-third session on the progress made in discharging his duties.

77. Resources for travel and subsistence would be required in connection with the invitation to the Special Adviser to address the Commission at its sixty-second and sixty-third sessions. No provisions have been made for these requirements in the proposed programme budget for the biennium 2006-2007. The full cost of such requirements would amount to $14,200 under section 23, Human rights. **These requirements would need to be met through an additional appropriation by the General Assembly.**

III. Overall requirements

78. The implications of resolutions and decisions adopted by the Economic and Social Council at its resumed organizational and first substantive sessions of 2005 would give rise to total requirements of $4,143,300, of which $3,571,300 can be absorbed, leaving a requirement of $572,000 in addition to the resources initially proposed for the biennium 2006-2007, as shown in the table below and in the annex.

Additional requirements for the biennium 2006-2007

(United States dollars)

Section 2. General Assembly and Economic and Social Council affairs and conference management	414 700
Section 9. Economic and social affairs	13 500
Section 23. Human rights	129 200
Section 28E. Administration, Geneva	14 600
Total	**572 000**

IV. Contingency fund

79. It will be recalled that under the procedures established by the General Assembly in its resolutions 41/213 and 42/211, a contingency fund is established for each biennium to accommodate additional expenditures derived from legislative mandates not provided for in the programme budget. Under this procedure, if additional expenditures are proposed that exceed the resources available from the contingency fund, the activities concerned can be implemented only through the redeployment of resources from low-priority areas or the modification of existing activities. Otherwise, such additional activities must be deferred to a later biennium.

80. The table above indicates that net additional provisions of $572,000 would be required over and above the resources initially proposed for the biennium 2006-2007. It is not possible at this stage to identify activities under sections 2, 9, 23 and 28E of the proposed programme budget for the biennium 2006-2007 that could be curtailed, deferred, terminated or modified during that biennium in order to meet the additional requirement of $572,000.

V. Recommendation

81. In summary, the implications of resolutions and decisions adopted by the Economic and Social Council at its resumed organizational and first substantive sessions of 2005 would give rise to net requirements for the biennium 2004-2005 under section 2, General Assembly and Economic and Social Council affairs and conference management ($654,600), section 24, Human rights ($295,100), and section 29E, Administration, Geneva ($14,600), totalling $964,300, which will be accommodated in the relevant sections of the revised appropriation for the biennium 2004-2005.

82. **Furthermore, Economic and Social Council resolution 2005/46 and decisions 2005/255, 2005/256, 2005/273, 2005/278, 2005/292 and 2005/295 would give rise to net requirements of $572,000 in addition to the resources initially proposed for the biennium 2006-2007 under various sections as follows: section 2, General Assembly and Economic and Social Council affairs and conference management ($414,700), section 9, Economic and social affairs ($13,500), section 23, Human rights ($129,200), and section 28E, Administration, Geneva ($14,600).**

83. **No provision was made under sections 2, 9, 23 and 28E of the proposed programme budget for the biennium 2006-2007 to cover the identified additional requirements. Consequently, a net additional provision of $572,000 is sought over and above the resources proposed in the programme budget for the biennium 2006-2007. This provision would represent a charge against the contingency fund for the biennium 2006-2007.**

Notes

[1] The proposed programme budget for the biennium 2004-2005 is contained in documents A/58/6 (Introduction), A/58/6 (Sects. 1-35), A/58/6 (Income sects. 1-3), A/58/6 (Sect. 14)/Rev.1, A/58/6/Corr.1 and A/58/6 (Sect. 3)/Corr.1 and 2.

[2] The proposed programme budget for the biennium 2006-2007 is contained in documents A/60/6 (Introduction), A/60/6 (Sects. 1-35), A/60/6 (Income sects. 1-3) and A/60/6/Corr.1-3.

Annex

Summary of requirements resulting from resolutions and decisions of the Economic and Social Council at its resumed organizational and first substantive sessions of 2005

(Thousands of United States dollars)

			2004-2005	2006-2007		
		Budget section[a]	*Requirements for expenditure (to be absorbed)*[b]	*Requests for expenditure*	*To be absorbed*	*Requirements for appropriation*
Economic and Social Council resolutions						
2005/29	Report of the United Nations Forum on Forests on its fifth session and provisional agenda for its sixth session	2	-	2 607 000	2 607 000	-
2005/46	Ad Hoc Advisory Group on Haiti	9	-	13 500	-	13 500
Economic and Social Council decisions						
2005/217	Reform proposed by the Secretary-General in the area of human rights	2	55 900	-	-	-
		29E/28E	1 400	-	-	-
2005/255	The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	2	103 800	207 600	-	207 600
		24/23	77 600	155 200	-	155 200
		29E/28E	3 300	6 600	-	6 600
2005/256	The right to development	2	341 600	-	-	-
		24/23	89 300	6 500	-	6 500
		29E/28E	6 600	-	-	-
2005/260	Effects of economic reform policies and foreign debt on the full enjoyment of all human rights	2	82 600	-	-	-
		24/23	43 400	-	-	-
		29E/28E	1 900	-	-	-
2005/273	Human rights and transnational corporations and other business enterprises	2	44 300	44 300	-	44 300
		24/23	25 500	25 500	-	25 500
		29E/28E	1 400	1 400	-	1 400
2005/278	Rights of persons belonging to national or ethnic, religious and linguistic minorities	24/23	-	(72 200)	-	(72 200)
2005/285	Promotion and realization of the right to drinking water and sanitation	2	26 400			
2005/286	Terrorism and human rights	24/23	14 000			
2006/290	Enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights	24/23	45 300			
2005/292	Organization of work of the sixty-second session of the Commission on Human Rights	2	-	162 800	-	162 800
		29E/28E	-	6 600	-	6 600
2005/295	Convention on the Prevention and Punishment of the Crime of Genocide	24/23		14 200	-	14 200
Total			**964 300**	**3 179 000**	**2 607 000**	**572 000**

[a] Where there are two section numbers, the first refers to the programme budget for the biennium 2004-2005 and the second to the proposed programme budget for the biennium 2006/2007.

[b] The estimated cost of the additional activities requested by the Commission on Human Rights relating to perennial activities will be financed from the existing provision; such costs are therefore not included in the present annex.